IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3925 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABARI MAGANBHAI LILABHAI - Petitioner(s)
Versus
COLLECTOR & 4 - Respondent(s)

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Appearance :
MR AS VAKIL for Petitioner(s) : 1,
MR.MAULIK NANAVATI AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/03/2007

ORAL JUDGMENT

1. **RULE**. Mr.Maulik Nanavati, learned A.G.P. waives service of Rule on behalf of respondent Nos.1 and 2. With the consent of the learned advocates appearing

for both the parties, the matter is finally heard today.

2. The petitioner has preferred the petition for challenging order dated 20.04.2006 passed by the District Collector, Mehsana whereby, certificate dated 01.04.2002 issued by the Mamlatdar certifying Rameshchandra Somchand Patel as the agriculturist, is cancelled and for challenging the order dated 21.11.2006 passed by the Collector, Patan whereby, the Entry Nos.6366 and 6472 are cancelled on the ground of breach of the provisions of Section 63 of the Bombay Tenancy and Agricultural Lands Act.

3. Heard Mr.A.S. Vakil, learned advocate for the petitioner and Mr.Maulik Nanavati, learned A.G.P. for the State authorities. Respondent No.5, though served, has chosen not to appear and as such in view of the order passed by this Court hereinafter, the presence of respondent No.5 even otherwise also may not be required.

4. Upon hearing Mr.A.S. Vakil, learned advocate for the petitioner and Mr.Nanavati, learned A.G.P. for

the State authorities including the District Collector, Mehsana and District Collector, Patan, it appears that it is an admitted position that no hearing whatsoever was given to the petitioner by the Collector, Mehsana before passing order dated 20.04.2006. Mr.Nanavati submitted that the notice was issued to Mr.Rameshchandra Somchand Patel, but since he was not available at the village and as per the record, no such person was staying at village Sultanpur and, therefore, the Collector had no option but to proceed and he further submitted that before the Collector, Patan, the petitioner was served with the notice and, therefore, he submitted that it is not a matter where no hearing whatsoever has been given.

5. In my view, the second hearing before the Collector, Patan for cancellation of the entry as such can be said as the consequence of the first order passed by the Collector, Mehsana on 20.04.2006 whereby the certificate as an agriculturist holding the land was cancelled. It is true that the certificate was issued by Mamlatdar in favour of

Mr.Rameshchandra Somchand Patel. However, based on the said certificate, not only he purchased the agricultural land but subsequently, the land is also purchased from him by the petitioner herein and, therefore, the petitioner can be said as directly affected by the cancellation of the certificate in favour of Mr.Rameshchandra Somchand Patel and the reason being that if the certificate stood cancelled in case of the vendor of the petitioner, the consequence may arise for adversely affecting, not only the title, but the rights of the petitioner to the land in question. Therefore, once the petitioner had purchased the land based on the transaction already entered into by his vendor earlier in capacity as the agriculturist and if the certificate was to be cancelled, the petitioner was required to be given opportunity of hearing by the District Collector since the order ultimately was to adversely affect also the rights of the petitioner. It is an admitted position that the Collector, Mehsana has not given any opportunity of hearing to the petitioner and, therefore, as such, the order passed by the Collector, Mehsana cannot be maintained in the eye of

law as the same is passed in breach of the principles of natural justice.

6. So far as the second order passed by the Collector, Patan is concerned, the same is as such as the consequence of the order passed by the Collector, Mehsana and the reason being that if the vendor ceases to be an agriculturist, it would affect the title of the vendor and consequently the purchaser who is the petitioner herein and, therefore, the entries are cancelled on the ground that the land was purchased by the agriculturist. Therefore, if the first order was passed for cancellation of the certificate was without giving opportunity of hearing and in breach of the principles of the natural justice, the second order passed by the Collector, Patan would also consequently be required to be quashed as there being no basis for such purpose.

7. In view of the above, I find that the order passed by the Collector, Mehsana and subsequently consequential order passed by the Collector, Patan both deserve to be quashed and set aside. Hence, the

impunged order dated 20.04.2006 passed by the Collector, Mehsana and order dated 21.11.2006 passed by the Collector, Patan are quashed and set aside with the further observations and directions that it would be open to the District Collector, Mehsana to issue notice to the petitioner and give the opportunity of hearing and to pass the fresh order on the aspect of the certificate issued to Mr.Rameshchandra Somchand Patel by Mamlatdar on 01.04.2002. It is further observed that after the order passed by the District Collector, Mehsana, it would also be open to the Collector, Patan to issue notice and to pass further order in accordance with law after giving opportunity of hearing to the petitioner and other affected parties.

8. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

9. It would be open to the petitioner to move concerned Talati for giving effect of the judgment of

this Court in the revenue record.

(JAYANT PATEL, J.)

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